

**Members**

Sen. Jeff Drozda, Chairperson  
Sen. Greg Walker  
Sen. John Broden  
Sen. Timothy Lanane  
Rep. David Niezgodski  
Rep. Nancy Dembowski  
Rep. Phil Hinkle  
Rep. Milo Smith  
Chuck Williams  
Andy Cook  
Barbara Krisher  
C. Pete Peterson  
Patti O'Callaghan  
Mark Catanzarite  
Ken Buck  
Tom Bodkin



## **ANNEXATION STUDY COMMITTEE**

*Legislative Services Agency*  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

**LSA Staff:**

Anne Haley, Attorney for the Committee  
Chris Baker, Fiscal Analyst for the Committee

Authority: P.L. 224-2007 (HEA 1478-2007)

### **MEETING MINUTES<sup>1</sup>**

**Meeting Date:** October 10, 2007  
**Meeting Time:** 10:00 A.M.  
**Meeting Place:** State House, 200 W. Washington St., Room 431  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 4

**Members Present:** Sen. Jeff Drozda, Chairperson; Sen. Greg Walker; Sen. Timothy Lanane; Rep. David Niezgodski; Rep. Nancy Dembowski; Rep. Phil Hinkle; Rep. Milo Smith; Chuck Williams; Andy Cook; Barbara Krisher; C. Pete Peterson; Patti O'Callaghan; Ken Buck; Tom Bodkin.

**Members Absent:** Sen. John Broden; Mark Catanzarite.

#### **1. Call to order**

After Sen. Drozda called the meeting to order at 10:16 a.m., the Committee members and staff introduced themselves.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## 2. Testimony and discussion

Joe Weingarten, Geist United Opposition, submitted his written testimony (Exhibit 1). Mr. Weingarten made the following comments:

- The law should require an annexation to be approved by a majority of voters instead of requiring 51% of landowners to remonstrate.
- In exchange for extension of municipal sewer service to a development, developers agree to waive the rights of future lot buyers to remonstrate. Developers conceal these agreements from first buyers and subsequent buyers are also unaware of these agreements. The law should prohibit these agreements because they allow a developer to decide the form of government that a lot owner will be subject to.
- "For sale" signs should include a statement that the property will be annexed in the future.
- Land should be annexed before lots are sold.
- Although Geist residents would prefer to remain unincorporated, they are forced to incorporate so they can be self-governed.

The Committee discussed requiring a developer, seller, or realtor to notify a buyer that a lot is subject to a remonstrance waiver and how a buyer is currently given notice when a waiver (like a restrictive covenant or an easement) is recorded. The Committee discussed how waivers allow a municipality to extend services to unincorporated areas and receive payment for the services after annexation of the area.

Rick Wajda, Indiana Builder's Association (Association), made the following comments:

- Restricting voluntary annexation could adversely affect development and undermine the goal of orderly growth.
- The current law provides municipalities with flexibility by allowing them to extend sewer and water services now but delay annexation of the service area. Providing sewer service to a development at the outset avoids a costly switch to sewer later.
- Waiver agreements are included with the closing documents. If living inside or outside of a municipality is an important issue to a real estate buyer, the buyer should be questioning the developer or realtor about this before making a decision about the real estate.
- Controversial annexations are isolated incidents. Association members said that annexation is not a big issue because most people want to be a part of the municipality.

Corby Thompson, K.E. Thompson, Inc., explained that he has 25 years of experience developing residential property. He made the following comments:

- In his experience, a vast majority of annexations were voluntary annexations of contiguous property that received municipal sewer and water service. Waivers have been used without incident, and are a necessary assurance to municipalities that they will be able to annex and offset the expense of services provided directly

or indirectly to the development.

- Most residents of developments in unincorporated areas think they are already living in the municipality, because they frequently see municipal fire trucks and school buses in their neighborhoods. Most lot buyers only ask questions about what school district their property is located in.
- Disclosure of waivers would be more effective if it occurred before the closing.

The Committee discussed whether receipt of city services adds value to property.

Jamie Palmer, Associate Director, Indiana Advisory Commission on Intergovernmental Relations (Commission), explained that the Commission is a statutory Commission. Ms. Palmer discussed the circumstances that led to the Commission's research and preparation of a 1998 report containing their findings: "Annexation in Indiana: Issues and Options" (Exhibit 2). She made the following comments:

- Legislation was passed in 1999 and after that addressed many of the areas of concern identified by the Commission, except for the issue of waivers. The Commission recommended that the disclosure of waivers be handled in a manner similar to the disclosure of real property defects to potential purchasers.
- In the 1999 legislation, the remonstrance threshold was increased to 65% in exchange for allowing judicial review of the substance of an annexation. Until the 1999 amendment, courts reviewed only the procedural aspects of annexations.
- From an efficiency standpoint, annexation is a way of matching people up to their services. People living outside of municipalities are benefitting from city services although they're not necessarily receiving police and fire service.

Tanya Galbraith, Town Manager of McCordsville, explained that she was a lobbyist for the Indiana Association of Cities and Towns in 1999, when the legislature made a difficult, comprehensive rewrite of the annexation law. Ms. Galbraith explained that the remonstrance threshold was increased to 65% in return for changes that made the annexation process more landowner-driven, including allowing landowners to defeat an annexation if certain circumstances were shown to a court's satisfaction. She said that the intensity of debate over involuntary annexations overshadows the many successful annexations.

Stuart Easley, Town Councillor of Fishers, submitted his testimony in writing (Exhibit 3). Mr. Easley discussed Fishers' growth, development, and commitment to long range planning. He discussed Fishers' efforts to inform Geist residents about the town's annexation proposal. Mr. Easley offered the following recommendations:

- Streamline annexations in which 100% of the landowners petition to be annexed.
- Require affirmative disclosure of sewer waivers.
- Increase the remonstrance threshold as the contiguity of the territory to the municipality increases.
- Require contiguity to be established at the time of annexation. Do not lengthen the period of time that contiguity can be challenged.

- Allow municipalities greater flexibility as to the annexation effective date and abatements and allow longer abatement periods.
- Reduce county government in proportion to the reduced demand for services due to annexation. All county residents pay for the county to provide select services to a small group of people. In the alternative, the county should charge differential tax rates for incorporated and unincorporated areas.
- Statutory changes for annexation, such as review of fiscal plans, should also be implemented in the process for incorporating a municipality.

Mr. Easley objected to derogatory comments made by witnesses in previous Committee meetings and in materials attached to the minutes about the actions of the Fishers town council in the Geist annexation. Mr. Easley said that the town council has conducted an open and fair process and that he would welcome the opportunity to rebut these comments. Committee member Andy Cook discussed the problems with municipalities giving tax abatements to landowners in an annexation.

### 3. Other business/adjournment.

Sen. Drozda said that the Committee would have the option of making findings and recommendations at the next meeting, which will also be the last meeting, on October 24th. Members will be sent one or two draft reports. Additional testimony will be taken, and then a roll call vote on any findings and recommendations. Sen. Drozda asked that any materials for the Committee to consider must be forwarded to him for inclusion with the draft report mailing. Sen. Drozda adjourned the meeting at 12:55 p.m..